

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States Courts
Southern District of Texas
FILED
MAY 25 2004

Michael M. Milby, Clerk

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IN RE ENRON CORPORATION SECURITIES,
DERIVATIVE & ERISA LITIGATION

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:
MDL 1446

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This Document Relates To:

MARK NEWBY, et al., Individually and on
Behalf of All Others Similarly Situated,

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:
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:
Civil Action No. H-01-3624
and Consolidated, Related and
Coordinated Cases

Plaintiffs,

- v. -

ENRON CORP., et al.,

Defendants.

-----X
THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA, Individually and on behalf of all other
similarly situated,

Plaintiffs,

:
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:
Civil Action No. H-04-0088

- v. -

MILBANK, TWEED, HADLEY & McCLOY LLP, et al.,

Defendants.

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**DEFENDANT MILBANK, TWEED, HADLEY & McCLOY LLP's RESPONSE IN
SUPPORT OF THE BANK DEFENDANTS' MOTION FOR MODIFICATION OF THE
SCHEDULING ORDER**

2154

Defendant Milbank, Tweed, Hadley & McCloy LLP ("Milbank") respectfully submits this response in support of the Bank Defendants' Motion for Modification of the Scheduling Order, dated May 20, 2004. Milbank supports the Bank Defendants' application for the 90-day adjournment of depositions, which are now scheduled to commence on June 2, 2004. Milbank, who was named a defendant in *The Regents of the University of California v. Milbank, Tweed, Hadley & McCloy LLP, et al.* only a few months ago, filed its Motion to Dismiss on April 5, 2004 (D.I. 20). Milbank strongly believes its dismissal motion is meritorious and will result in dismissal of Milbank from this action. Because Milbank's dismissal motion will not be fully submitted until July 12, 2004, Milbank will be unduly and unnecessarily burdened and prejudiced by the commencement of depositions on June 2, 2004.

Milbank was not named as a defendant until January 9, 2004, more than two years after the beginning of the Enron class action litigation. Because Plaintiffs' original complaint against Milbank violated Rule 11, Plaintiffs withdrew their complaint and filed an amended complaint nearly one month later, on February 6, 2004, less than four months before the scheduled commencement of depositions on June 2.

While Milbank is entitled to an automatic stay of discovery under the Private Securities Litigation Reform Act of 1995 ("PSLRA"), 15 U.S.C. § 78u-4(b)(3)(B), Milbank recognizes that this Court lifted the stay of discovery as to nearly all of the other defendants in this action in August 2003, and appreciates the massive coordination efforts that have taken place since then. Nonetheless, Plaintiffs' choice to add Milbank to this action only a few months ago places Milbank in a daunting position. Milbank must simultaneously brief its meritorious dismissal motion, while culling tens of millions of pages of documents, and preparing for and attending depositions of non-parties and parties as to whom the PSLRA's discovery stay has

been lifted. The adjournment would more fully preserve Milbank's stay of discovery under the PSLRA and enable Milbank to conserve the considerable resources that participation in this massive discovery would require.

If adjourned, depositions would not begin until nearly two months after Milbank's dismissal motion has been fully submitted, giving the Court an opportunity to rule on Milbank's motion before depositions begin, which on the current schedule is impossible. In any event, the requested adjournment would place Milbank on a more level playing field in this litigation.

DATED: New York, New York
May 24, 2004

FRIED, FRANK, HARRIS, SHRIVER
& JACOBSON LLP

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CERTIFICATE OF SERVICE

A true and correct copy of the foregoing has been served upon all counsel of record via the www.esl3624.com website, on this 24th day of May 2004.



Julie E. Kamps

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

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IN RE ENRON CORPORATION SECURITIES, :
DERIVATIVE & ERISA LITIGATION :
:
:

MDL 1446

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This Document Relates To: :

MARK NEWBY, et al., Individually and on :
Behalf of All Others Similarly Situated, :

Plaintiffs, :

- v. - :

ENRON CORP., et al., :

Defendants. :

Civil Action No. H-01-3624
and Consolidated, Related and
Coordinated Cases

-----X
:
THE REGENTS OF THE UNIVERSITY OF :
CALIFORNIA, and NATHANIEL PULSIFER, TRUSTEE :
OF THE SHOOTERS HILL REVOCABLE TRUST, :
Individually and on Behalf of All Others Similarly :
Situating, :

Plaintiffs, :

- v. - :

MILBANK TWEED HADLEY & McCLOY, ANDREWS :
& KURTH LLP, THE GOLDMAN SACHS GROUP, :
INC., and GOLDMAN SACHS & CO., :

Defendants. :

Civil Action No. H-04-0088

-----X
ORDER GRANTING MODIFICATION OF SCHEDULING ORDER

On the _____ day of May, 2004, after considering the Bank Defendants' Motion for Modification of the Scheduling Order, and all supporting and opposing responses thereto, the Court is of the opinion that the Motion should be granted; it is therefore

ORDERED that the Motion for Modification of the Scheduling Order is granted and the Court Orders that the Scheduling Order entered on March 12, 2004 is modified as follows:

The Commencement of Fact Depositions is extended until September 6, 2004;
and

All dates in the March 12, 2004 Scheduling Order are likewise extended from their current deadline to 90 days thereafter.

Signed this _____ day of May, 2004.

THE HONORABLE MELINDA HARMON
UNITED STATES DISTRICT JUDGE

CASE: 4:01-cv-03624/P

DOCUMENT: 2153

DATE: 05/25/04

CLERK: tw

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States District Court
Southern District of Texas
FILED

MAY 25 2004

Michael A. Kirby, Clerk

Mark NEWBY,
Plaintiff,

v.

ENRON CORP., et al.,
Defendants.

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§

Consolidated Lead No. H-01-3624

AMERICAN NATIONAL
INSURANCE COMPANY, et al.,
Plaintiffs,

vs.

ARTHUR ANDERSEN, L.L.P., et al.
Defendants.

§
§
§
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§
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§

Civil Action No. G-03-967

AMERICAN NATIONAL
INSURANCE COMPANY, et al.,
Plaintiffs,

vs.

J. P. MORGAN CHASE & COMPANY,
Defendant.

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Civil Action No. G-02-0299

AMERICAN NATIONAL INSURANCE
COMPANY; et al.,
Plaintiffs

vs.

CITIGROUP, INC; et al.
Defendants.

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Civil Action No. G-02-723

AMERICAN NATIONAL INSURANCE,
et al.,
Plaintiffs,

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2153

v. § Civil Action No. G-02-463
§
LEHMAN BROTHERS HOLDINGS, INC., §
et al., §
Defendants. §

WESTBORO PROPERTIES, LLC §
and STONEHURST CAPITAL, INC. §
Plaintiffs §
vs. § Civil Action No. H-03-1276
§
CREDIT SUISSE FIRST BOSTON, INC., §
et al., §
Defendants. §

AMERICAN NATIONAL INSURANCE §
COMPANY, et al., §
Plaintiffs §
vs. § Civil Action No. G-03-0481
§
ROYAL BANK OF CANADA §
Defendant. §

WESTBORO PROPERTIES, L.L.C. §
and LUCELIA FOUNDATION, INC. §
Plaintiffs §
vs. § Civil Action No. H-03-5424
§
JP MORGAN CHASE & COMPANY §
Defendant. §

**RESPONSE BY PLAINTIFFS AMERICAN NATIONAL, ET AL., AND
WESTBORO PROPERTIES, ET AL, IN OPPOSITION TO BANK
DEFENDANTS' MOTION FOR MODIFICATION OF SCHEDULING ORDER**

Plaintiffs in the above styled actions file this Response in Opposition to The Bank
Defendants' Motion for Modification of Scheduling Order.

DEPOSITIONS SHOULD NOT BE DELAYED

The Banks provide no legitimate justification for a blanket delay of depositions. Only fact witnesses are scheduled for deposition during June through August 2004. These witnesses, accordingly, will be examined only on matters within their personal knowledge. *See* Fed. R. Evid. 602. Nowhere in the Bank's Motion to modify the scheduling order, or in over two hundred pages of exhibits tendered in support of the Motion, do the Banks explain why any of the witnesses scheduled for June-August depositions must examine Enron or Arthur Andersen documents in order to testify on personal knowledge about matters that occurred years ago.

The Federal Rules of Civil Procedure contemplate that all types of discovery – interrogatories, requests for production, depositions – may be pursued simultaneously. If a rule required that every document be produced prior to depositions, the time from the filing of a typical lawsuit to judgment would be greatly increased, and the instant lawsuit would never end.

The Banks are disingenuous in claiming "surprise" that not every Enron and Arthur Andersen document will be available by June 1, 2004. If the Banks are truly surprised, they are the only ones. The sheer magnitude of the production virtually guaranteed that the document production and preparation would not be completed by June 1. If the Banks were monitoring the document production as claimed, they should have determined their purported "need" to postpone the depositions long ago. Plaintiffs have arranged their schedules and purchased transportation to attend the scheduled depositions. Changing the deposition schedule at this late date would therefore work a

hardship on Plaintiffs. Considering all the relevant factors, the deposition schedule should not be modified.

PRAYER

Plaintiffs pray that the Bank Defendants' Motion for Modification of the Scheduling Order be denied.

Respectfully submitted,

By: 

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on this the 24th day of May, 2004, a copy of the forgoing document was served on all counsel of record by posting in PDF format to www.esl13624.com.

By: 

Steve Windsor

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Mark NEWBY,
Plaintiff,

v.

ENRON CORP., et al.,
Defendants.

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Consolidated Lead No. H-01-3624

ORDER

Before the Court is the Bank Defendants' Motion for Modification of Scheduling Order. The Court has considered the Motion and Response and concludes that the Motion is without merit.

It is, therefore, the ORDER of the Court that Bank Defendants' Motion for Modification of Scheduling Order is hereby DENIED.

DONE this ____ day of May, 2004.

MELINDA HARMON
UNITED STATES DISTRICT JUDGE